

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

62-HQ-116604
Sub EBF8
Section 1
Serial 1
Page 4-5

WILLIAM S. JORDAN,

Plaintiff,

v.

CIVIL ACTION NO. C 75-166

DELBERT LATTA, Individually
and in his official capacity
as a United States Congress-
man; LARRY PAUL; Individually and
in his official capacity as an agent
for the Federal Bureau of Investigation;
GEORGE BLUE, Individually and in his
official capacity as an agent for the
Federal Bureau of Investigation and
UNITED STATES OF AMERICA,

Defendants.

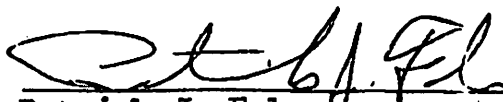
SUPPLEMENT TO MOTION TO DISMISS, OR,
IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

Defendants Delbert Latta, Larry Paul, George Blue and the United States, by their undersigned attorneys, hereby supplement their Motion to Dismiss, or in the Alternative for Summary Judgment pursuant to 12(b)(6) and Rule 56 of the Federal Rules of Civil Procedure, and respectfully refer the Court, additionally, to the Affidavit of Violet C. Koerber and to the supplemental Affidavits of Delbert Latta, dated September 19, 1975; Larry Paul, dated September 4, 1975; and George Blue, dated September 4, 1975. The Court is also respectfully referred to defendants' Supplemental Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss, or, in the Alternative, for Summary Judgment, and in Reply to Plaintiff's Memorandum in Opposition thereto.

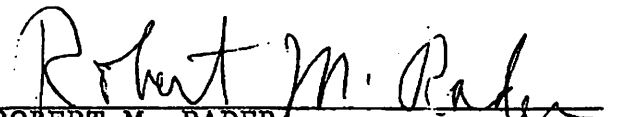
Respectfully submitted,

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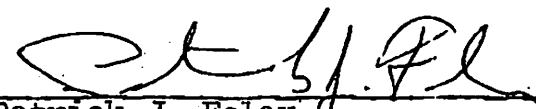

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CERTIFICATION

This is to certify that a copy of the within Supplement to Motion to Dismiss, Or, In The Alternative For Summary Judgment has been mailed this 21st day of October, 1975, to TED IORIO, ESQ., Attorney at Law, 3161 North Republic Boulevard, Toledo, Ohio, 43615, Attorney for Plaintiff.


Patrick J. Foley
Assistant United States Attorney

UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA,

Defendants..

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS OR, IN
THE ALTERNATIVE FOR SUMMARY JUDGMENT,
AND IN REPLY TO PLAINTIFF'S MEMORANDUM
IN OPPOSITION THERETO

I. PRELIMINARY STATEMENT

Plaintiff has brought this action for money damages and
injunctive relief against the Honorable Delbert L. Latta,
United States Representative from the Fifth Congressional
District of Ohio, and Larry Paul and George Blue, two agents
of the Federal Bureau of Investigation. Plaintiff's claim
arises out of a routine FBI interview which occurred on
April 14, 1975 at the home of the plaintiff with his consent.
This interview was prompted by information received from
Congressman Latta by Special Agent John Brennan of the FBI
in Toledo, Ohio on April 12, 1975 to the effect that plaintiff
was extremely dissatisfied with the Congressman's efforts to
assist plaintiff in a labor dispute with his employer and had
angrily stated that he intended "to take care of the matter
himself" (Latta Affidavit at page five).

62-HQ-116604
Sub EBF 8
Section 1
Serial 1
Pgs. 24-44

This statement by plaintiff which caused Congressman Latta to become quite anxious for his personal safety and the safety of others was the culmination of a week's effort by the Congressman to assist plaintiff in opposing what plaintiff described as an effort by his employer to compel him and other truckers to alter their contracts by strong-arm tactics. Congressman Latta promptly sought guidance from the General Counsel of the National Labor Relations Board for the Ohio area, and prepared proposed legislation, H.R. 6589, now pending, for the assessment of penalties against employers who harass or coerce independent contractors, such as plaintiff, for the purpose of effecting a modification of an employment contract. Nonetheless, plaintiff insisted that the Congressman had not done enough on his behalf, and on April 12, 1975 telephoned the Congressman to complain bitterly of his dissatisfaction. Plaintiff's "extremely emotional and accusatory" state, characterized by his stated intention "to take care of matters himself" (Latta Affidavit at page five; Latta Supplemental Affidavit at page two), led Congressman Latta to fear for his personal safety and the safety of others. Also, the Congressman had in mind plaintiff's allegations of strong-arm tactics being used by his employer, which the Congressman thought might involve criminal provisions of federal labor law.

With these considerations in mind, Congressman Latta reached the FBI the following day to report the facts as he understood them for whatever disposition the FBI deemed appropriate. Congressman Latta neither requested nor suggested that the FBI interview the plaintiff. However, it was the considered judgment of Special Agent Brennan, after consultation with Assistant United States Attorney Patrick J. Foley,

that plaintiff's intention "to take matters into my own hands" may have been an implied threat of violence against Congressman Latta or plaintiff's employer and required clarification (Brennan Affidavit at page three). Two agents, Larry Paul and George Blue were dispatched to plaintiff's residence to interview plaintiff. Plaintiff consented to this interview which took but fifteen minutes and ended promptly when the FBI agents determined to their satisfaction that no threat of violence had actually been intended. Thus, plaintiff's action proceeds entirely on his misguided speculation upon Congressman Latta's reasons for contacting the FBI and the purpose of the FBI interview at his home, notwithstanding the uncontradicted statement of all defendants that plaintiff had threatened "to take matters into his own hands."

II. STATEMENT OF FACTS

On or about April 4, 1975, Congressman Delbert Latta was contacted by a man who identified himself as William Jordan, a constituent of the Congressman. Jordan complained to the Congressman that his employer, a trucking company, was pressuring its employees into certain contract changes which would result in a loss of income to the employees, and that he personally had been singled out as a troublemaker. (Latta Affidavit at page one). Jordan stated that he feared strong-arm tactics and his union representative had been unwilling to help him, and that he was therefore coming to the Congressman as a last resort. Congressman Latta responded that he did not know what he could do for Jordan on the spur of the moment, but offered to look over whatever papers Jordan could forward to him. During this conversation, Jordan spoke in a rambling, highly emotional, and at times, angry tone of voice. (Latta Affidavit at pages one and two).

On April 6, 1975 Jordan appeared at the Congressman's home in Bowling Green, Ohio to deliver personally the papers he wished Congressman Latta to review. His appearance and manner were somewhat belligerent and nasty, and the Congressman did not invite Jordan into his home, but did accept the papers Jordan delivered to him. (Latta Affidavit at pages two and three).

The very next morning Congressman Latta gave these papers to a legislative aide on his staff, Violet Koerber, and briefed her on this matter. Congressman Latta told Miss Koerber that because interstate trucking was involved, violations of federal labor laws may have occurred. Accordingly, Miss Koerber pursued this matter to Mr. Thomas Wilks, General Counsel of the NLRB for the Ohio area, who suggested that the most expeditious way to investigate the matter would be for Mr. Jordan and other similarly affected truckers to file a formal complaint with the NLRB Regional Director. Miss Koerber then prepared a letter for Congressman Latta's signature dated April 10, 1975 (copy attached to Congressman Latta's Affidavit), advising plaintiff that the matter could be fully investigated by NLRB only if a formal complaint were filed. (Latta Affidavit at page three; Koerber Affidavit at pages one and two).

On April 11, 1975 Congressman Latta received another telephone call from Jordan, whose tone of voice was again angry and hostile. Jordan told the Congressman that he anticipated being fired by his employer on a pretext (and that this was all the Congressman's fault because of his inaction on Jordan's behalf. Congressman Latta attempted to calmly explain what he had done, as stated in his letter to Jordan dated April 10, 1975, but Jordan persisted in accusing the Congressman of giving him the "run-around". Despite the Congressman's repeated efforts during that conversation to calm him,

Jordan insisted that he was "to take care of the matter his own way" (Latta Affidavit at pages four and five). Throughout this conversation, Jordan had been "extremely emotional and accusatory, angry and belligerent, sounded desperate, refused to accept my several admonitions to follow the law, and led [Congressman Latta] to believe he had concluded that the only recourse remaining to him was to take the law into his own hands" (Latta Affidavit at page five).

Congressman Latta contacted Special Agent John Brennan of the Toledo office of the FBI the following day. The Congressman was troubled by plaintiff's agitated demeanor, especially in light of plaintiff's belief that he was on the verge of losing his trucking rig on account of a trumped-up safety violation, and also because of plaintiff's stated intention to take care of matters himself. In the context of the plaintiff's hostile and demanding attitude, the Congressman felt that plaintiff may have been threatening physical violence to either himself or plaintiff's employer (Latta Affidavit at five; Latta Supplemental Affidavit at pages two and three). Moreover, Congressman Latta was convinced that he had done all he could for plaintiff and that if in fact plaintiff's employer were guilty of criminal, strong-arm tactics, the FBI should be contacted. Therefore, Congressman Latta resolved to bring the entire matter of the truckers' dispute and plaintiff's threatening behavior before the FBI for whatever action it deemed appropriate. (Latta Affidavit at page five; Latta Supplemental Affidavit at pages two and three).

Thus, on the morning of April 12, 1975 Congressman Latta related to Special Agent John Brennan all that had

transpired in the truckers' dispute as well as the disturbing phone conversation with plaintiff the night before. It is clear that Congressman Latta did not himself request the FBI to interview Jordan or otherwise make an investigation of the matter, but only brought certain facts to the FBI's attention to handle as it saw fit (Latta Affidavit at page five; Latta Supplemental Affidavit at pages two and three). The decision to interview plaintiff was clearly that of Special Agent Brennan, and only after consultation with Assistant United States Attorney Patrick J. Foley. Both men agreed that plaintiff's stated intention "to take care of the matter his own way" may have been an implied threat against the Congressman and at the very least required immediate clarification (Brennan Affidavit at page three). Congressman Latta had no knowledge whatever that agents were to be assigned to interview plaintiff, nor did he know their identities, their instructions, the substance of the interview, or what official action was taken by the FBI as a result of that interview (Latta Supplemental Affidavit at page three).

On the morning of April 14, 1975 FBI agents Larry Paul and George Blue were assigned to this matter to determine if Jordan had been or was presently contemplating a violation of the criminal statutes of the United States, 18 U.S.C. §§ 351, 1951 (Paul and Blue Affidavits at pages one and two). At that time, Jordan recounted his story to the agents, by and large confirming Congressman Latta's recollection of those events as told to the FBI and as set forth in his Affidavit. Significantly, Jordan admitted to the agents that he had been unduly forceful with Congressman Latta and had made unfair statements and accusations (Paul and Blue Affidavits at page three; Paul and Blue Supplemental Affidavits

at page two), but it was concluded by the agents and the office of the United States Attorney that no criminal actions had occurred and none was being contemplated by Jordan (Paul and Blue Affidavits at pages three and four) and the matter was therefore dropped.

This interview was carried out solely because of plaintiff's emotional statements causing Congressman Latta to become concerned for his personal safety as well as the safety of plaintiff's employer and others, and was in no way a consequence of any "undue pressure" upon the FBI by Congressman Latta. Nor did FBI agents Paul and Blue indicate to Jordan that he should not have further contact with the press, Congressman Latta or anyone else (Paul and Blue Affidavits at page four; Paul and Blue Supplemental Affidavits at page one). The FBI investigation resulted from the opinion of Assistant United States Attorney Patrick Foley to Special Agent John Brennan that clarification should be sought of Jordan's threat to Congressman Latta to take the matter into his own hands (Brennan Affidavit at page three). Likewise, Special Agent Brennan felt that, in his experience, Jordan's hostile remarks indicated possible violence either toward Congressman Latta or Jordan's employer, and he dispatched two agents to determine if Jordan contemplated violence or threats of violence against either person (Brennan Affidavit at pages three and four).

It is evident that FBI agents Paul and Blue said nothing to Jordan to threaten, coerce or intimidate him during their brief interview with him on April 14, 1975, nor could any of their actions be reasonably construed as harrassment of Jordan in violation of Jordan's right to petition the Government for a redress of grievances (Paul and Blue Affidavits

at page five). In fact, most of the interview was used by Jordan himself to explain his labor dispute with his employer. (Paul and Blue Affidavits at page four). Finally, neither agent advised plaintiff not to put anything in the newspapers which would be detrimental to the Congressman's political career (Paul and Blue Supplemental Affidavits at page two).

III. ARGUMENT

A. Plaintiff's Claims Against All Defendants Are Barred By The Doctrine Of Official Immunity And, Additionally, By The Doctrine Of Congressional Immunity
As To Any Claim Against Congressman Latta

The Affidavits of Congressman Delbert Latta and FBI Special Agents Larry Paul and George Blue, as confirmed by the Affidavit of their immediate superior, Special Agent John Brennan, establish that the actions of the defendants were in the discharge of their official duties as officers of the United States. It is therefore apparent that this action may not be maintained, for it is well established that no action can be brought or tried against federal officials for damages based upon acts committed within the outer perimeter of their official duties. This "official immunity" doctrine is not merely a bar to recovery, but is a bar to the civil damage action itself. See Barr v. Matteo, 360 U.S. 564, 571 (1959); Howard v. Lyons, 360 U.S. 593 (1959); Yaseli v. Goff, 275 U.S. 503 (1927); Spalding v. Vilas, 161 U.S. 483 (1896).

The rationale for the doctrine of official immunity is stated in Barr v. Matteo, supra, at 571:

It has been thought important that officials of government should be free to exercise their duties unembarrassed by the fear of damage suits in respect of acts done in the course of those duties--suits which would consume time and energies which would otherwise be devoted to governmental service and the threat of which might appreciably inhibit the fearless, vigorous, and effective administration of policies of government.

The court in Barr also expressly approved Judge Learned Hand's decision in Gregoire v. Biddle, 177 F.2d 579, 581 (2nd Cir. 1949), cert. denied, 339 U.S. 949 (1950), wherein Judge Hand observed that the proper administration of government requires that officials be afforded such "absolute privilege," for:

[T]o submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again and again the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith." [Quoted in Barr v. Matteo, supra at 571].

Simply as stated in Barr v. Matteo, supra, at 575: "The fact that the action here taken was within the outer perimeter of petitioner's line of duty is enough to render the privilege applicable, despite the allegations of malice in the complaint." See also, Gregoire v. Biddle, supra at 581; Preble v. Johnson, 275 F.2d 275, 178 (10th Cir. 1960).

The Supreme Court in Barr v. Matteo, supra at 572-573, also indicated that the doctrine of "official immunity" applies regardless of whether or not the official is one of high office:

We do not think that the principle announced in Vilas can properly be restricted to executive officers of cabinet rank, and in fact it has never been so restricted by the lower federal courts. The privilege is not a badge or emolument of exalted office, but an expression of a policy designed to aid in

the effective functioning of government. The complexities and magnitude of governmental activity have become so great that there must of necessity be a delegation and redelegation of authority as to many functions, and we cannot say that these functions become less important simply because they are exercised by officers of lower rank in the executive hierarchy.

In particular, the Federal Courts have on many occasions applied the doctrine of "official immunity" to law enforcement officers. Sowers v. Damron, 457 F.2d 1182 (10th Cir. 1972) (Special Agent, I.R.S.); Chavez v. Kelly, 364 F.2d 113 (10th Cir. 1966) (Federal Narcotics Agent); Swanson v. Willis, 114 F. Supp. 434 (D. Alaska, 1953), aff'd., 220 F.2d 440 (9th Cir. 1955) (Deputy U.S. Marshal); Gallella v. Onassis, 353 F. Supp. 196 (S.D. N.Y. 1972), aff'd., 487 F.2d 986 (2nd Cir. 1973) (Special Agents of the United States Secret Service); Jones v. Warlick, 364 F.2d 828 (4th Cir. 1966) (Special Agents of the Federal Bureau of Investigation); Norton v. McShane, supra (Special Agents of the Federal Bureau of Investigation); Scherer v. Brennan, 379 F.2d 609 (7th Cir.), cert. denied, 389 U.S. 1021 (1967) (Special Agents of the Alcohol and Tobacco Tax Division of the Treasury Department); Papagianakis v. The Samos, 186 F.2d 257 (4th Cir. 1950), cert. denied, 341 U.S. 921 (1951) (Immigration Inspector); Cooper v. O'Connor, 99 F.2d 135 (D.C. Cir. 1938) (Special Agent of the Federal Bureau of Investigation); Burgwin v. Mattson, Civil Action No. 73-280 (D. Ore., Decided Nov. 1, 1973) (Special Agent of the Federal Bureau of Investigation) (Slip Opinion previously supplied); Hartline v. Clary & Carswell, 141 F. Supp. 151 (E.D. S.C. 1956) (Special Agents of Alcohol and Tobacco Tax Division of the Treasury Department).

The decisions cited by plaintiff to the contrary are inapposite. The decision by the Supreme Court in Scheurer v. Rhodes, 416 U.S. 232 (1974), denying absolute immunity to various

officials charged with civil rights violations, was an action against State officials pursuant to the Civil Rights Act of 1871, now 42 U.S.C. §1983. Since Section 1983 by its very terms applies only to officials acting under color of State law, a grant of absolute immunity would have amounted to judicial repeal of the statute. 416 U.S. at 443. See Donaldson v. O'Conner, 493 F.2d 507, 530 (5th Cir. 1974)(citing cases); C.M. Clark Insurance Agency v. Maxwell, 479 F.2d 1223, 1227 (D.C. Cir. 1973). The decision of the Second Circuit in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 456 F.2d 1339 (2nd Cir. 1972), disallowed absolute immunity only on the ground that the execution of a search warrant by a federal law enforcement officer was not an exercise of policy-making authority which required discretion so as to entitle the officer to immunity. Bivens was cited with approval by this Circuit in Jones v. Perrigan, 459 F.2d 81 (6th Cir. 1972), where a qualified immunity based on good faith was recognized with regard to an action for false arrest. Both the facts of the Perrigan decision and the language from Bivens relied upon by the Sixth Circuit indicate clearly that the absolute immunity historically enjoyed by federal officers acting within the scope of their official duties was qualified only with regard to searches and arrests. Thus, numerous courts have interpreted the Supreme Court's holding in Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), as permitting an action for damages for Fourth Amendment rights only. See Davidson v. Kane, 337 F. Supp. 922 (E.D. Va. 1972); Smothers v. Columbia Broadcasting, Inc., 351 F. Supp. 622 (C.D. Cal.

1972); Moore v. Schlesinger, Civil Action No. C-5152 (D. Colo. October 29, 1974) (copy previously supplied); Archuleta v. Callaway, 385 F. Supp. 384 (D. Colo. 1974).

Agents Paul and Blue conducted a brief interview with plaintiff with his consent. No "search" or "seizure" occurred so as to bring Bivens into play. The Supreme Court has not authorized a cause of action for money damages based upon an alleged violation of First Amendment rights, and this Court ought not to create such a right as a matter of federal common law without clearer direction from the Supreme Court. If by simply impugning the motives of the interviewing agents, plaintiff can enlarge a routine interview with consent into a violation of First Amendment rights, and thus strip the officer of his official immunity, the potential for frivolous and vexatious litigation is unlimited.

Similarly, Congressman Latta is immune to suit in this instance because the occurrences alleged by plaintiff arose out of the Congressman's alleged failure, as plaintiff has set forth in his complaint, "to fulfill those duties owed plaintiff by defendant Latta in his capacity as a United States Congressman" The disposition of a constituent's request to a Congressman is clearly a matter within the legislative sphere so as to entitle the Congressman to absolute congressional immunity under the Speech or Debate Clause of Article I, Section 6, Clause 1 of the United States Constitution. A Congressman enjoys complete immunity when he refers to the Federal Bureau of Investigation a communication from a constituent so hostile or threatening as to bring about a justifiable fear for his safety. If a congressman must weigh too carefully the threat he apprehends against the possibility that he will later be called upon in court to justify reporting a threat to federal

authorities the ability of the FBI to afford protection will be sharply impaired. The special attention which must be given to the protection of congressmen is apparent from the provisions of 18 U.S.C. §351, which makes it a federal crime to kill, kidnap, or assault a United States congressman. Certainly there is nothing more fundamental to the legislative process than the protection of the legislators themselves from threats of harm which necessarily coerce, harass, and distract legislators from their elective tasks.

As stated by the Supreme Court in Powell v. McCormack, 395 U.S. 486, 503 (1969), the Speech or Debate Clause "insures that legislators are free to represent the interests of their constituents without fear that they will be later called to task in the courts for that representation." The Speech or Debate Clause has been construed "broadly to effectuate its purposes," United States v. Johnson, 383 U.S. 169, 180 (1966), and the immunity thereunder extends to any of those matters "generally done in a session of the House by one of its members in relation to the business before it." Kilbourn v. Thompson, 103 U.S. 168, 204 (1881). Immunity has been afforded members of Congress in a number of circumstances including the subpoenaing of records by a congressional committee, Dombrowski v. Eastland, 387 U.S. 82 (1967), the preparation, publication and distribution of a congressional report, Doe v. McMillan, 412 U.S. 306 (1973), and the conduct of committee hearings, Tenney v. Brandhove, 341 U.S. 367 (1951). Aside from ensuring the independence of members of Congress, the immunity thus granted eliminates the burdensomeness of a private civil action which "creates a distraction and forces Members to divert their time, energy, and attention.

from their legislative tasks to defend the litigation," Eastland v. United States Servicemen's Fund, 43 U.S.L.W. 4635, 4639 (May 27, 1975).

To reiterate one test formulated by the Supreme Court in this context, surely it must be admitted that the disposition by a congressman of a constituent's request or complaint is "an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House." Gravel v. United States, 408 U.S. 606, 625 (1972). That much is clear from Congressman Latta's introduction of House Resolution 6859 for the protection of truckers, like plaintiff, from unfairly coercive tactics by their employers to modify existing contracts.

Independence from threats or coercion, whether explicit or more subtly stated, is likewise an integral part of the "deliberative and communicative process" by which legislation is proposed and considered. "It is the purpose of the [Speech or Debate] Clause that the legislative function the Constitution allocates to Congress may be performed independently," and if private civil suits against congressmen are permitted, "judicial power is still brought to bear on Members of Congress and legislative independence is imperiled." Eastland v. United States Servicemen's Fund, supra at 4639. Obviously, Congress cannot act independently and impartially if its members are subjected to implied threats or hostile demeanor suggesting the possibility of physical violence for actions taken or not taken on behalf of a congressman's constituents. The mere reporting of such incidents to law enforcement authorities is, therefore, within the legislative sphere.

However, even if the Court should determine that Congressman Latta is not entitled to immunity under the Speech or Debate Clause, absolute immunity should nonetheless be extended to the Congressman in this action because the actions complained of by plaintiff with respect to Congressman Latta occurred within the scope of his official duties or at least the outer perimeter thereof. As noted by the Supreme Court in Barr v. Matteo, supra at 571, the necessity of immunizing potential defendants from damage suits to permit "the fearless, vigorous, and effective administration of policies of government" extends to all "officials of government," not just those of any particular branch. Moreover, in Doe v. McMillan, supra at 320, the Supreme Court expressly recognized that while a named defendant in a damage suit (there, the Public Printer and the Superintendent of Documents) may not qualify for absolute immunity under the Speech or Debate Clause, he may be afforded absolute immunity nonetheless as an officer of the government acting within the scope of his official duties:

Of course, to the extent that they serve legislative functions, the performance of which would be immune conduct if done by Congressman, these officials enjoy the protection of the Speech or Debate Clause. Our inquiry here, however, is whether, if they participate in publication and distribution beyond the legislative sphere, and thus beyond the protection of the Speech or Debate Clause, they are nevertheless protected by the doctrine of official immunity.

In this instance, Congressman Latta reported to the FBI that a constituent had communicated with him in such a hostile manner as to make the Congressman feel threatened, because the constituent was dissatisfied with the disposition of a request made to Congressman Latta. Thus, plaintiff corresponded with

Congressman Latta solely in his official capacity as congressman and it follows, therefore, that Congressman Latta's report to the FBI was also made in his capacity as a congressman, particularly in light of 18 U.S.C. §351. An officer of the government who is or reasonably feels threatened by actions of another relating to his official duties certainly still acts within the scope of his official duties when he reports the matter to law enforcement authorities.

Plaintiff's attempt to narrow the protection afforded the defendants under the doctrines of official immunity and congressional immunity lack justification. Plaintiff apparently contends that Congressman Latta is not entitled to congressional immunity because "[i]t was not until after the complaint was filed that Defendant Latta introduced House Resolution 6859."^{*/} Surely, the legislative independence assured each congressman under the Speech or Debate Clause cannot be so sparingly dispensed.

Also without merit is plaintiff's apparent claim that Congressman Latta's report to the FBI of a possible threat against him is not that kind of action "necessary to preserve the legislative process."^{*/} In sum, plaintiff seeks to overcome the absolute immunity afforded Congressman Latta and FBI Agents Paul and Blue merely by pure conjecture as to their motives. But as noted by Judge Learned Hand in Gregoire v. Biddle, supra at 581, an inquiry into one's motives under these circumstances "would dampen the ardor of all but the most resolute" willing to re-examine his actions in hindsight "to satisfy a jury of his good faith." Where an investigation by federal authorities has gone no further than an informal interview, far short of a Fourth Amendment "search" or "seizure,"

^{*/} plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment at 16.

there is no compelling reason to lift the complete immunity accorded a congressman reporting a possible threat against him, and the complete immunity accorded investigating officers as well.

B. The Allegation That Congressman Latta
Filed A Complaint With The FBI Fails
To State A Claim Upon Which Relief
May Be Granted.

Congressman Latta is clearly immune to the allegations of plaintiff's Complaint, but even if the Court finds it necessary to examine the Complaint upon its merits, it is obvious that plaintiff has failed to state a claim against the Congressman upon which relief may be granted. The core of plaintiff's allegations is that Congressman Latta "filed a complaint with the FBI against Plaintiff because Plaintiff had allegedly put undue pressure on Defendant Latta" (Complaint ¶12), and the Congressman's action "in utilizing the FBI was meant to curtail the Plaintiff's rights to petition government" (Complaint ¶16). However, it is entirely within the rights of a citizen to report suspicious circumstances to law enforcement authorities for whatever action such authorities themselves deem appropriate. No cause of action exists for simply reporting such circumstances.

Charles Stores Co. v. O'Quinn, 178 F.2d 372 (4th Cir. 1949);

Campbell v. Yellow Cab Co., 137 F.2d 918 (3rd Cir. 1943);

Farrell v. Hollingsworth, 43 F.R.D. 362 (D. S.C. 1968); Seelig

v. Harvard Cooperative Society, 355 Mass. 532, 246 N.E. 2d 642

(Mass. 1969); Pride v. Lamberg, 366 S.W. 2d 441 (Mo. 1963);

Renda v. International Union, United Automobile, Aircraft and

Agricultural Workers, 366 Mich. 48, 114 N.W. 2d 343 (1962);

Zenik v. O'Brien, 137 Conn. 592, 79 A.3d 769 (Conn. 1951);

Hughes v. Van Bruggen, 44 N.M. 534, 105 P.2d 494 (N.M. 1940);

Dismukes v. Trivers Clothing Co., 221 Ala. 29, 127 So. 138 (Ala.

1930); Carswell v. Southwestern Bell Telephone Co., 449 S.W. 2d 805 (Tex. App. 1969); Western Oil Refining Co. v. Glendenning, 156 N.E. 182 (Ind. App. 1927).

These authorities indicate that one who reports a possible crime to the authorities, but who leaves disposition of the matter within their hands and suggests no action, cannot incur civil liability for any wrongful arrest and prosecution of the accused. Plaintiff's reliance upon the "good faith" requirement in reporting such information is misplaced, since the existence of a malicious motive is relevant only in an action for malicious prosecution. The instant action is not such an action, as it is clear that an action for malicious prosecution would require along with an improper motive three other elements: the institution and continuation of criminal proceedings, termination of the proceedings in favor of the accused, and an absence of probable cause to institute the proceedings. W. Prosser, The Law of Torts § 113 at 853 (1964). Plaintiff was never arrested or prosecuted, and no action for malicious prosecution will lie. Thus, unless these other elements exist, the Court has no cause to inquire into the motives of Congressman Latta in reporting a possible threat to the FBI. Additionally, of course, his absolute immunity precludes an inquiry into his motives, "despite the allegations of malice in the complaint," Barr v. Matteo, supra at 575.

While plaintiff has failed to state a claim upon which relief may be granted, the record in this case establishes that Congressman Latta did nothing to harass, coerce or intimidate plaintiff in the free exercise of his right to petition government. Indeed, plaintiff has fairly well abandoned this tack in favor of an argument that Congressman

Latta utilized the FBI "to harass Plaintiff in an attempt to keep him from going to the press,"^{*/} so that "he might save his political career."^{**/} Thus, plaintiff asserts that the career of a nine-term congressman could be endangered by his allegations in this action and he demands the right to bring the Congressman to trial for money damages upon his supposition. It is from just such frivolous allegations that the doctrines of official immunity and congressional immunity are intended to guard government officers and legislators, leaving them free to pursue their important official functions.

Nevertheless, the record amply supports the propriety of Congressman Latta's action in reporting his concern for his personal safety and the safety of others to the FBI. It is not controverted that plaintiff is a young trucker who was on the verge of losing his job when he contacted Congressman Latta as a last resort, and that he contacted Congressman Latta persistently thereafter to urge that "something" be done on his behalf. In light of plaintiff's desperate plight, his emotional pleas for help, and his threat as a final resort "to take matters into my own hands," or words very closely to that effect, it was not unreasonable for Congressman Latta to call the FBI to report what may well have been intended as a threat of personal harm against himself or plaintiff's employer. Significantly, plaintiff does not deny that he threatened "to take matters into his own hands," but only denies having explicitly said that he would do so "through violent means."^{***/} Thus, plaintiff admits the threatening character of his statement while denying violent intentions, but the impact of such a threat under the circumstances can hardly be ignored.

^{*/} Plaintiff's Memorandum in Opposition to Defendants' Motion To Dismiss or, in the Alternative, for Summary Judgment at 16.

^{**/} Id. at 9.

^{***/} Affidavit of William Jordan ¶ 9.

Quite inconsistent with the malicious intent attributed to Congressman Latta's actions is his sponsorship of H.R. 6589 for the imposition of criminal penalties upon an employer who uses coercive tactics to modify an employee's contract terms. The record is also clear as to the Congressman's efforts to obtain from the NLRB directions as to how plaintiff and other truckers could proceed upon a claim of an unfair labor practice, as summed up in his letter to plaintiff dated April 10, 1975 (copy attached to Affidavit of Congressman Latta previously filed): Indeed, counsel now advises that charges have been made to the NLRB, which has investigated the conduct of the employer and has issued unfair labor practice charges.^{*/} These objective facts are the best indicia of the Congressman's attitude towards plaintiff in contacting the FBI, and malice being absent, the case ought not to proceed merely upon plaintiff's subjective speculation of an improper or hostile motive. Summary judgment is appropriate where the uncontroverted record is this clear. Scheuer v. Rhodes, 416 U.S. 232, 249-50 (1974).

C. The Allegation That An FBI Interview Was Conducted On Account Of An Improper Motive Fails To State A Claim Upon Which Relief May Be Granted.

Plaintiff's allegations against FBI Agents Larry Paul and George Blue rely entirely upon Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), as creating cause of action for an alleged infringement of plaintiff's right to petition government. As discussed previously, however, Bivens went no further than to create a remedy out of the federal common law for Fourth Amendment violations. Also; the record shows no infringement of plaintiff's right to petition his government.

^{*/} Plaintiff's Memorandum in Opposition to Defendants' Motion To Dismiss or, in the Alternative, for Summary Judgment at 2.

Certainly, infringement could not be inferred from the mere conduct of a routine interview with plaintiff's consent lasting for about fifteen minutes. Law enforcement authorities frequently receive information from private citizens which requires further clarification. There is no authority for the proposition that the act of conducting an FBI interview is actionable in any respect, especially absent arrest. The United States Attorney in fact declined criminal prosecution upon the information provided him by FBI agents Paul and Blue as a result of their interview with plaintiff. So much routine criminal investigation is conducted daily that to predicate civil liability simply upon the 'impropitious' comments of the investigator, real or imagined, would set an intolerable burden upon the law enforcement officer and the prosecutor to justify their motives. Indeed, plaintiff does not even allege that Agents Paul and Blue acted maliciously or with an unlawful purpose, such as curtailing plaintiff's right to petition his government. The allegations as to them are made only to reflect in turn upon the motives of Congressman Latta in contacting the FBI. Thus, plaintiff alleges that he was told by the agents not to put anything in the papers which would be detrimental to Congressman Latta's political career. It is also alleged that the agents thought the Congressman's "complaint" was frivolous. These allegations are scarcely believable and again demonstrate the need to insulate law enforcement authorities from groundless suits for money damages under the doctrine of official immunity. Otherwise, the authorities would be put to the task of first investigating one reporting a possible crime before interviewing the suspect himself.

But even so, any gratuitous solicitation shown by the agents for the Congressman hardly amounts to a deprivation of constitutional rights. Plaintiff does not allege that he was threatened with detention, arrest, prosecution or any other sanction. Plaintiff's cause of action, in short, depends entirely upon his own. No one has curtailed plaintiff's right to petition Congress, least of all by a simple inquiry from FBI agents. Plaintiff cannot elevate an imagined offense to his sensibilities to a constitutional plateau where FBI agents have done nothing more than question him upon information indicating the possible contemplation or commission of threats or crimes of violence.

Moreover, the good faith of both agents in conducting this limited interview is a matter of record. The Affidavits and Supplemental Affidavits of Special Agents Larry Paul and George Blue, as well as the Affidavit of their immediate superior, Special Agent John Brennan, clearly establish the legality of their actions. At no time of their interview with plaintiff did either Special Agent Paul or Blue accuse plaintiff of a crime, or restrain him from departing, or indicate that they would not heed a request from plaintiff to depart. These Affidavits establish that the interview with plaintiff was solely for the purpose of determining whether plaintiff was contemplating violence, that the interview ended as soon as this situation was clarified, and that in fact the greater part of the interview was given over to plaintiff's recital of his difficulties with his employer. As indicated by plaintiff's Affidavit, these agents readily identified themselves, stated their purpose, and listened at length to plaintiff's account of his difficulties with his employer. This also demonstrates the

good faith of the agents. Finally, the good faith of each agent is evident from the fact that each accurately reported to their superior and Assistant United States Attorney Patrick J. Foley

the facts stated in their respective Affidavits from which the Assistant determined that no prosecution was warranted. If either agent had been motivated by bad faith, the most obvious leverage with plaintiff was certainly ignored.

D. The United States Is Not Subject To
An Action Seeking An Injunction Without
Its Consent By Statute.

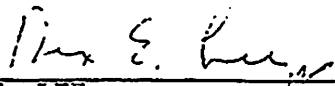
Plaintiff concedes that money damages are not available against the United States, but argues that the United States may be sued "to insure that Plaintiff will not be subject to retaliatory harassment by other agencies of the federal government." However, the United States is immune to injunctive relief to which it has not consented just the same as a claim for money damages, Hawaii v. Gordon, 373 U.S. 57 (1963); Dugan v. Rank, 372 U.S. 609 (1963); Larson v. Domestic & Foreign Corp., 337 U.S. 682 (1949), whether the action proceeds against the United States directly or one of its officers acting on behalf of the sovereign.

Further, there is no statute by which "the United States" has general supervisory authority over its agencies. Any allegation that an officer of a particular federal agency has deprived plaintiff of his civil rights may be disposed of at the proper time. At this time, however, such claims are clearly speculative and premature.

CONCLUSION

For the reasons more fully stated herein, it is respectfully urged that the Court dismiss this action, or, in the alternative grant summary judgment in favor of defendants.


Respectfully submitted,



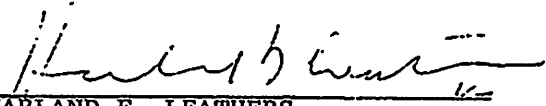
REX E. LEE
Assistant Attorney General

FREDERICK M. COLEMAN

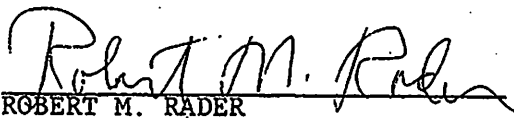
FREDERICK M. COLEMAN
United States Attorney



Patrick J. Foley
Assistant United States Attorney



HARLAND F. LEATHERS

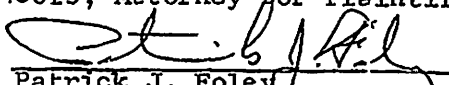


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CERTIFICATION

This is to certify that a copy of the within Supplemental Memorandum in Support of Defendants' Motion to Dismiss or, in the alternative for Summary Judgment, and in Reply to Plaintiff's Memorandum in Opposition thereto, has been mailed this 21st day of October, 1975, to TED IORIO, ESQUIRE, Attorney at Law, 3161 North Republic Boulevard, Toledo, Ohio 43615, Attorney for Plaintiff.



Patrick J. Foley
Assistant United States Attorney